

EXHIBIT E

TITLE XVII ZONING

Chapters:

- 17.02** **Old Island County Critical Areas Ordinance**
- 17.02A** **New Island County Critical Areas Ordinance**
- 17.02B** **Island County Critical Areas Regulations**
- 17.03** **Island County Zoning Code**
- 17.04** **Ebey’s Landing National Historical Reserve (Superseded by 17.04A)**
- 17.04A** **Ebey’s Landing National Historical Reserve Design Review and
Community Design Standards**
- 17.05** **Shoreline Use Regulations**

Chapter 17.02

Old Island County Critical Areas Ordinance

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17.02.040 **Critical Areas**

- A. Purpose.** This section establishes general requirements and regulations for the protection of critical areas pursuant to the Growth Management Act.
 - 1. For a Development Proposal submitted prior to the effective date of Chapter 17.02A ICC, unless an Owner or applicant elects voluntarily to have a complete application reviewed under that Chapter, the application shall be reviewed under this Chapter.
 - 2. Unless an Owner or applicant elects voluntarily to comply with the Critical Area requirements of Chapter 17.02A ICC, all Agricultural practices, on lands that contain or are affected by Critical Areas or Critical Area Buffers, shall comply with this Chapter.
- B. Applicability.** This section shall apply to all properties referenced in subsection A which contain or are affected by Critical Areas or Critical Areas Buffers except as specifically noted below. Designated critical areas are:
 - 1. Wetlands. Wetlands are regulated pursuant to the Wetlands Overlay Zone, ICC 17.02.050.A, the Land Use Standards governing wetlands, deepwater habitats and their surrounding buffers, ICC 17.02.060, 17.03.260.I and the Land Development Standards, Chapter 11.01 ICC.

2. Fish and Wildlife Habitat Conservation Areas. Fish and Wildlife Habitat Conservation Areas shall be regulated as follows:
 - a) Until such time that the updated Island County Shoreline Master Program adopted by Resolution C-125-12 is approved by the Washington State Department of Ecology, Fish and Wildlife Habitat Conservation Areas within the jurisdiction of the Island County Shoreline Master Program (SMP) and the Washington State Shoreline Management Act (SMA) shall be regulated by this Chapter.
 - b) Upon approval by the Washington State Department of Ecology of the updated Shoreline Master Program adopted by Resolution C-125-12, Fish and Wildlife Habitat Conservation Areas within the jurisdiction of the Island County Shoreline Master Program (SMP) and the Washington State Shoreline Management Act (SMA) shall be regulated by the Island County SMP.
 - c) Fish and Wildlife Habitat Conservation Areas outside of the jurisdiction of the Island County Shoreline Master Program (SMP) and the Washington State Shoreline Management Act (SMA) shall be regulated by the provisions of Chapter 17.02B ICC.
 - d) Fish and Wildlife Habitat Conservation Areas shall also be regulated pursuant to health regulations governing the design and installation of on-site sewage systems, Chapter 8.07D ICC, and the Land Development Standards, Chapter 11.01 ICC.

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Chapter 17.02A

New Island County Critical Areas Ordinance

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17.02A.020 Designated Critical Areas

This Chapter shall apply to all properties located in Island County that contain or are affected by designated Critical Areas or Critical Area Buffers except as noted below. Designated Critical Areas are:

- A. Wetlands. Wetlands are regulated by this Chapter, Chapters 17.02 and 17.03 ICC; the health regulations governing the design and installation of on-site sewage systems; the Land Development Standards Ordinance, Chapter 11.01 ICC; the Clearing and Grading Ordinance, Chapter 11.02.ICC; the Storm Water Management Ordinance, Chapter 11.03 ICC; and the Shoreline Master Program, Chapter 17.05 ICC.
- B. Fish and Wildlife Habitat Conservation Areas. Fish and Wildlife Habitat Conservation Areas shall be regulated as follows:
 1. Until such time that the updated Island County Shoreline Master Program adopted by Resolution C-125-12 is approved by the Washington State Department of Ecology, Fish and Wildlife Habitat Conservation Areas within the jurisdiction of the Island County Shoreline Master Program (SMP) and the Washington State Shoreline Management Act (SMA) shall be regulated by Chapter 17.02 ICC.
 2. Upon approval by the Washington State Department of Ecology of the updated Shoreline Master Program adopted by Resolution C-125-12, Fish and Wildlife Habitat

Conservation Areas within the jurisdiction of the Island County Shoreline Master Program (SMP) and the Washington State Shoreline Management Act (SMA) shall be regulated by the Island County SMP.

3. Fish and Wildlife Habitat Conservation Areas outside of the jurisdiction of the Island County Shoreline Master Program (SMP) and the Washington State Shoreline Management Act (SMA) shall be regulated by the provisions of Chapter 17.02B ICC.
4. Fish and Wildlife Habitat Conservation Areas shall also be regulated pursuant to health regulations governing the design and installation of on-site sewage systems, Chapter 8.07D ICC, and the Land Development Standards, Chapter 11.01 ICC.

C. Geologically Hazardous Areas. Geologically hazardous areas are regulated by Chapters 11.02 and 11.03 ICC.

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17.02A.030 Definitions

Unless expressly noted otherwise, words and phrases that appear in this Chapter shall be given the meaning attributed to them by this section. When not inconsistent with the context, words used in the present tense shall include the future; the singular shall include the plural and the plural the singular; the word “shall” is always mandatory and the words “may” and “should” indicate a use of discretion in making a decision. Capitalized words and phrases identify a term defined in this Chapter; other Chapters of Title 17; or Chapters contained in Title 16.

Accessory Use or Structure: A Use or Structure customarily considered incidental to or secondary to a Permitted Use or an approved Conditional Use on a Lot or on adjacent Lots under the same ownership. Examples of Accessory Structures include, but are not limited to, sheds, shops, garages, greenhouses, barns, Guest Cottage, etc.

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Habitat Management Plan: For Wetlands, a site-specific plan for Maintaining, Re-establishing, Rehabilitating, Enhancing, Creating or Preserving Habitat for a Wetland Dependent Species. For Fish and Wildlife Habitat Conservation Areas, specific requirements for a Habitat Management Plan (HMP) are set forth in Chapter 17.02B ICC.

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Protected Species: Species of flora and fauna listed by the federal government or the State of Washington as endangered, threatened or sensitive which are present in Island County and those species of flora and fauna which, while not necessarily endangered or threatened, are determined by Island County to be worthy of a higher level of protection than other species and are designated as Species of Local Importance under Chapter 17.02B ICC

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Species of Local Importance: Plants or animals designated by the County pursuant to Chapter 36.70A RCW. The procedure and criteria for such designations are set forth in Chapter 17.02B ICC and the designated Species of Local Importance are listed in Appendix A to that Chapter.

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17.02A.070 Critical Area Mitigation

A. General Mitigation Standards

1. Mitigation shall be required to compensate for any approved Alteration of a Wetland or Fish and Wildlife Habitat Conservation Area or Buffer for these Critical Areas. Mitigation requirements shall be established after determining that the Alteration cannot be avoided, reduced or Restored as required by ICC 17.02A.040.A.5.
2. Unless clearly specified otherwise, all Mitigation required under this Chapter shall be based on an approved Mitigation Plan. Mitigation Plan requirements for Wetlands are set forth in ICC 17.02A.090 and for Fish and Wildlife Habitat Conservation areas in Chapter 17.02B ICC. All Mitigation shall be Monitored, typically by the Applicant, and a Contingency Plan shall be required for any approved Mitigation.

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17.02A.100 Fish and Wildlife Habitat Conservation Areas (See ICC 17.02.050C and Chapter 17.02B ICC)

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Chapter 17.03 Island County Zoning Code

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17.03.030 User Guide

- A.** Three different sections of the Zoning Code need to be consulted to understand what land Use activity can be conducted in the County. First, turn to the applicable Zone classification. You will find both Permitted and Conditional Uses. Second, once you have located your intended Use, check the definition section for the definition of special terms, ICC 17.03.040. Capitalized words and phrases identify a defined term. Third, check to see if special conditions or land Use standards are applicable to the Use. You will find these standards in the land Use standards section, ICC 17.03.180. If you find no special standards for a listed Use, then none are expressly required by this Zoning code. Though not typically used, site specific conditions may be imposed to address impacts of a proposal. Other Chapters of Title 17 may also require compliance. Chapters 17.02, 17.02A, and 17.02B Critical Areas and Chapter 17.05 Shoreline Use Regulations may impose special standards and in some cases limit Uses otherwise allowed by the Zoning Code. For example, Chapter 17.05 ICC provides for and establishes standards for some specific shoreline uses. Other titles of the Island County Code may also need to be consulted as well, such as Health (Title 8), Land Development Standards (Title 11), Public Works (Title 13), Building (Title 14) and Planning and Subdivision (Title 16).

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17.03.040 Definitions

Unless expressly noted otherwise, words and phrases that appear in this Chapter shall be given the meaning attributed to them by this section. When not inconsistent with the context, words used in the present tense shall include the future; the singular shall include the plural and the plural the singular; the word “shall” is always mandatory and the words “may” and “should” indicate a use of discretion in

making a decision. Capitalized words and phrases identify a term defined in this Chapter; other Chapters of Title 17; or Chapters contained in Title 16. Unless otherwise noted, the words and phrases defined in this section shall apply, unless a more specific definition is provided in another Title or Chapter of Island County Code.

17.03.050 Zoning Classifications and Overlays

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C. Maps of Zoning Classifications, Shoreline Environments and Overlays

1. Zoning classifications established by this Chapter are bounded and defined as shown on the official zoning maps contained in the Zoning Atlas of Island County, which together with all explanatory materials contained thereon, are hereby made a part of this Chapter. The Zoning Atlas shall also identify approved surface mining operations and lands that have been designated mineral lands of long term commercial significance.

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4. Certain areas have also been mapped as Overlay Zones. Generally, except for the potential UGA Expansion Area Overlay these areas are defined and regulated by Chapters 17.02, 17.02A, and 17.02B ICC. Shoreline areas are also subject to additional regulations and mapped shoreline environment designations. Uses in these areas are governed by Chapter 17.05 ICC.

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17.03.082 Oak Harbor – Industrial (OH-I) Zone

The OH-I district is intended to accommodate certain industrial structures and uses having physical and operational characteristics, which might adversely affect adjoining residential and commercial uses. Regulations are designed to permit those industrial uses that can be operated in a clean, quiet and safe manner compatible with adjoining land uses.

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G. Land Use Standards

All projects shall comply with applicable use standards of ICC 17.03.180 unless modified by this Section; Critical Area Standards, Chapters 17.02, 17.02A, and 17.02B ICC; and Island County AICUZ Standards.

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17.03.083 Oak Harbor - Highway Service Commercial (OH-HSC) Zone

The Highway Service Commercial Zone (OH-HSC) is intended to permit the establishment of facilities within the Oak Harbor Municipal Urban Growth Area oriented toward uses dependent upon highway location. It is intended that such districts should be placed at locations providing the highest degree of usefulness to the traveling public and maintain an attractive, functional and safe highway corridor within the Oak Harbor UGA.

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G. Land Use Standards

All projects shall comply with applicable use standards of ICC 17.03.180 unless modified by this Section; Critical Area Standards, Chapters 17.02, 17.02A, and 17.02B ICC; and Island County AICUZ Standards.

17.03.084 Oak Harbor - Planned Business Park (OH-PBP) Zone

The purpose and intent of the Planned Business Park is to:

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G. Land Use Standards

All projects shall comply with applicable use standards of ICC 17.03.180 unless modified by this Section; Critical Area Standards, Chapters 17.02, 17.02A, and 17.02B ICC; and Island County AICUZ Standards.

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17.03.086 Oak Harbor-Planned Industrial Park (OH-PIP) Zone

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G. Land Use Standards

All projects shall comply with applicable use standards of ICC 17.03.180 unless modified by this Section; Critical Area Standards, Chapters 17.02, 17.02A, and 17.02B ICC; and Island County AICUZ Standards.

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17.03.160 Special Review District

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D. Standards. The Site Plan approval criteria set forth in Chapter 16.15 ICC shall be applied to a Master Plan for a Special Review District. In addition, the proposed uses may be approved only upon determining that features of historical, archaeological or environmental significance will be enhanced, conserved or highlighted. Further, reasonable conditions may be required to ensure that the proposed Master Plan protects Rural Character. Unless waived or modified by the Board in its approval, the Land Use standards set forth in ICC 17.03.180 shall apply to all Uses. The following standards shall also apply:

1. The land area that is included in the acreage calculation must consist of land that is either physically or functionally connected to the primary use of the site. The applicant must demonstrate one of the following:

a) All 150 acres are contiguous, or

b) For any land that is not contiguous, it must be demonstrated that there is an

interdependence between the primary use(s) and the use of the non-contiguous property. The applicant shall describe the relationship between any properties that are not contiguous, why they are binding upon each other, and why it is necessary that the non-contiguous property must be included in order to achieve the purpose, goals and objectives of the Master Plan beyond merely meeting the minimum acreage requirement.

2. The 150 acres may consist of any upland areas as well as any areas that consist of critical areas and their buffers as established in Chapters 17.02, 17.02A, and 17.02B ICC.

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17.03.161 Au Sable Institute (SD-ASI) Zone

The Au Sable Institute (SD-ASI) Zone is applied to a one-hundred-seventy-five (175) acre site in Central Whidbey that is owned and operated by the Au Sable Institute. This zone allows for development and specific uses that have been approved through the adoption of a Master Plan. The purpose and intent of the Master Plan is to provide long term protection to environmentally, historically and archaeologically significant lands while allowing uses, activities and development that will enhance, conserve or highlight these features of significance.

All Permitted and Conditional Uses shall comply with the applicable Land Use Standards of ICC 17.03.180. For those Land Use Standards that are addressed in the approved Master Plan, standards in the Master Plan shall be applicable. For those Uses that are not specifically listed as permitted or conditional and are not specifically identified in the Master Plan, the Planning Director shall have the authority to make Code Interpretations pursuant to ICC 17.03.190. All development shall adhere to Critical Area Regulations as they are prescribed in Chapters 17.02, 17.02A, and 17.02B ICC.

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17.03.163 Greenbank Farm Port Tract (SR-GF) Zone

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This zone allows for development and specific uses that have been approved through the adoption of a Master Plan. All permitted and conditional uses shall comply with the Land Use Standards of ICC 17.03.180 unless otherwise directed in this section or the Master Plan. If there is a conflict between standards of this section or with standards in other sections of this chapter, the Master Plan shall prevail. For those uses that are not specifically listed as permitted or conditional and are not specifically identified in the Master Plan, the Planning Director shall have the authority to make Code Interpretations pursuant to ICC 17.03.190. All development shall adhere to the Critical Area Regulations as they are prescribed in Chapters 17.02, 17.2A, and 17.02B ICC, the Land Development Standards of Title 11 and all other applicable regulations. The SR-GF Zone includes four sub-designations; Area 1 is Agriculture, Area 2 is Recreation, Area 3 is Commercial and Area 4 is Environmentally Sensitive.

- A. Area 1 – Agriculture

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- D. Area 4 – Environmentally Sensitive

1. Permitted Uses. These uses, activities and standards have been approved through and are subject to the Master Plan. These uses are processed as Type I decisions pursuant to Chapter 16.19 ICC, however, additional permit requirements may be necessary pursuant to the Critical Area regulations set forth in Chapters 17.02, 17.02A, and 17.02B ICC. Prior to conducting any activity or establishing any use in this area, the provisions of Chapters 17.02, 17.02A, and 17.02B ICC shall be satisfied and adhered to.
 - a) Low impact trails and recreational uses;
 - b) Birding Platforms; and
 - c) Interpretive areas.
2. Prohibited Uses.
 - a) Any Structure, Uses or Activity that does not meet the standards of Chapters 17.02, 17.02A, and 17.02B ICC, the Critical Areas Regulations;
 - b) Agriculture is prohibited within a regulated critical area or its buffer; and
 - c) Camping.

E. Annual Review Amendments. Any amendment to the Master Plan, the Comprehensive Plan or to this ordinance shall be processed as an Annual Review Amendment pursuant to Chapter 16.26 ICC.

F. Setbacks and Heights

1. Setbacks from designated critical areas shall comply with buffer and setback provisions of Chapters 17.02, 17.02A, and 17.02B ICC.

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17.03.180 Land Use Standards

The Land Use Standards contained in this section supplement the general land Use regulations of this Chapter and the specific development standards contained in other Chapters of the Island County Code.

A. General Standards for Nonresidential Uses in the Rural, Rural Residential, Rural Forest, Rural Agriculture and Commercial Agriculture Zones

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S. Site Coverage and Setbacks

1. Site Coverage. Lot or Parcel site coverage is established by a ratio percentage based on the gross site area of the property. Specific coverage ratios are as follows:

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7. Special Shoreline Setbacks

- a) The standard Shoreline Setback for Dwelling Units shall be fifty (50) feet landward of the OHWM except for the Conservancy and Natural Environments, where the setback

shall be seventy-five (75) feet landward of the OHWM.

- b) A greater Setback may be required if necessary to comply with the grading, geologically hazardous area, erosion control and drainage requirements of Chapter 11.02 ICC and Chapter 11.03 ICC and/or the critical areas regulations contained in Chapters 17.02, 17.02A, and 17.02B ICC.
- c) For the purpose of accommodating shoreline views within existing developed areas. Setbacks for residential uses may be reduced consistent with the following:
 - (i) Where there are Existing principal residences that encroach on the established setback within two-hundred-forty (240) feet of either side of the proposed building footprint, the required setback for the proposed structure may be reduced by review and approval of the Shoreline Administrator. In such cases, the setback of the proposed residential structures may be reduced to the average of the setbacks of the existing adjacent principal residences.
 - (ii) In those instances where only one (1) Existing principal residence is within two-hundred-forty (240) feet of either side of the proposed building site, the Setback of the proposed structure may be reduced (with approval of the Administrator) to the average of the Setbacks for the existing adjacent principal residence and the applicable Setback for the adjacent vacant parcel.
 - (iii) The reduced setbacks applied above shall not be less than twenty-five (25) feet landward of the OHWM except for the Natural and Conservancy Environments, where the minimum shall be fifty (50) feet, unless required to comply with the Setback requirements of this Chapter and Chapters 17.02, 17.02A, and 17.02B ICC.

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U. **Surface Mining.** The purpose of this subsection is to protect from encroachment reserves of nonrenewable resources and minimize increases in costs of new construction. Also the purpose of this chapter is to establish standards which minimize the impacts of extractive operations upon surrounding properties by: ensuring adequate review of operating aspects of extractive sites; requiring project phasing on large sites to minimize environmental impacts; and requiring minimum site areas large enough to provide setbacks and mitigations necessary to protect environmental quality. Surface Mining is prohibited in the Commercial Agriculture Zone.

1. **Application Requirements.** Applications will be reviewed through the Site Plan review process as a Type III application set forth in Chapter 16.15 ICC. If the proposed surface mine is not identified on the Mineral Resource Lands Map E of the Comprehensive Plan, an annual review amendment application shall be submitted concurrently with the Site Plan Review application. If the project is granted site plan approval prior to being added to Map E the applicant may develop the project pursuant to Site Plan Review conditions and does not have to wait for the Comprehensive Plan Amendment. In addition to the information required by Chapters 8.09 and 16.15 ICC, the applicant must provide the following information:

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3. Standards - Reclamation

- a) General requirements. Reclamation of mined lands shall be carried out in accordance with the requirements of this section, the approved Reclamation plan, and Chapter 78.44 RCW. The operator shall guarantee all Reclamation work accomplished for a period of two (2) years or such greater period as may be determined necessary by the Hearing Examiner to assure the permanency of any or all physical Reclamation features.
- b) Progressive Reclamation. Reclamation of mined areas shall take place as soon as practical following completion of Surface Mining at successive locations within the mining site as specified by the Hearing Examiner in the approval of the Reclamation plan.

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- d) Drainage, erosion and sediment control
 - (i) Any temporary stream or watershed diversion shall be restored in final Reclamation unless determined unnecessary by the Hearing Examiner, based on recommendation of the County Engineer. Stream diversions shall comply with the Critical Area requirements of Chapters 17.02, 17.02A, and 17.02B ICC.

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W. Scenic Corridors

The purpose of the Scenic Corridor standards is to establish the general design guidelines for aesthetic improvements on the main entrance roadways to a city/town/non-municipal Urban Growth Area. Existing significant trees and understory vegetation should be preserved that can be incorporated into the landscape design of development proposed along the designated scenic corridors. These standards are intended to result in development that provides a visual buffer between development and the road, and maintains a continuity of the City's/Town's/Non-Municipal Urban Growth Area design concepts and preserves existing natural vegetation.

- 1. Langley Scenic Corridors within the Urban Growth and Joint Planning Areas:

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Coupeville Scenic Corridors:

- a) The purpose of the Coupeville Scenic Corridors is to protect existing stands of significant trees and understory vegetation outside the public right-of-way. The following roads within the Coupeville Joint Planning Area as shown on Map B-1 of the Island County Comprehensive Plan as subarea 2 will be afforded additional standards listed herein:

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- b) A minimum setback of fifty (50) feet is established where structures may not be constructed in subarea 2. The fifty (50) feet setback shall be measured outside of and adjacent to the right-of-way on private or public property, on each side of the identified

roadways. For lots less than one (1) acre in size, the setback may be reduced as necessary to allow reasonable economic use of the property as a Type II Planning and Community Development Director decision pursuant to ICC 16.19. The setback shall not be reduced to less than twenty (20) feet unless it is necessary to achieve a Reasonable Use as defined in Chapters 17.02, 17.02A, and 17.02B ICC.

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Y. Existing Master Planned Resorts. Through the Type IV decision process, Existing Master Planned Resorts may be designated provided that future development and specific uses have been approved through the adoption of a master plan. The purpose and intent of the master plan is to provide long term protection to environmentally, historically and archaeologically significant lands, while allowing uses, activities and development that will enhance, conserve or highlight these features of significance. This section is established for the purpose of allowing Existing Master Planned Resorts to be recognized in the Island County Code thereby enabling existing resorts to carry out future development plans. In the absence of this section of County code, uses that now qualify as an Existing Master Planned Resort were regulated under the provisions of the underlying zoning designation. Uses that qualify as an Existing Master Planned Resort do not conform to the underlying zoning designation and would therefore be subject to the Existing Uses section of this Chapter found in 17.03.230. The urban nature of Existing Master Planned Resorts as defined by RCW 36.70A.362 was not acknowledged or accommodated before the establishment of this section.

1. Existing Master Planned Resorts must adhere to the standards defined in RCW 36.70A.362.
 - a) The master plan must show that the land is better suited, and has more long term importance, for the existing resort than for the commercial harvesting of timber or agricultural production, if located on land that would otherwise be designated as forest land or agricultural land under RCW 36.70.110 and 36.70A.170.

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- e) The master plan for the Existing Master Planned Resort shall be consistent with standards, requirements, and provisions of Chapters 17.02, 17.02A, and 17.02B ICC.

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2. A master plan shall demonstrate how the existing resort meets the requirements of ICC 17.03.180.G(1) AND include the following:
 - a) An inventory of the existing structures and land uses on the property where the proposed Existing Master Planned Resort exists.

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- h) A resource management plan that outlines management strategies for timber or agricultural lands and sensitive or threatened species as identified in Chapter 17.02B ICC.

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17.03.190 Code Interpretation

The Planning Director shall interpret by written decision the text of this Chapter pursuant to the terms and conditions of this section.

- A. **Purpose.** This section provides a simple and expeditious method for clarifying ambiguities in the text of this Chapter or classifying Uses that are not expressly referenced. Broad latitude has been provided in the specific Uses enumerated in each land Use classification. Therefore, interpretation will be required, from time to time, to overcome inadvertent rigidities and limitations inherent whenever lists of specific Uses are established. Prohibited Uses are identified expressly. There is no presumption that a Use that is not listed is or should be prohibited. Code interpretations are used to establish the proper classification of unnamed Uses and allow for the formalization of other interpretations that may be required to effectively administer the Zoning Code. Code interpretation can be initiated by the County or requested by an Owner.

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- E. **Time Limit.** Use interpretations shall remain in effect until modified by a subsequent code interpretation or code amendment.
- F. **Applicability to Chapter 17.02B ICC.** The procedures outlined in this section shall also be used to issue interpretations of Chapter 17.02B ICC, subject to any additional requirements or provisions set forth in ICC 17.02B.050.

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17.03.210 Variances

The Planning Director may authorize variances from the standards of this Chapter pursuant to this section.

- A. **Purpose.** The purpose of this section is to allow the County to consider requests to vary or adapt the strict application of any of the following provisions of this Chapter:

1. Setback requirements of this Chapter.

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7. The performance and dimensional standards of Chapter 17.02B ICC.

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- C. **Review Process.** The review process for variances shall be the review process set forth in Chapter 16.19 ICC for Type II decisions and for Type III decisions for height variances and Critical Areas Variances issued pursuant to the provisions of Chapter 17.02B. ICC.

- D. **Standards.** No variance shall be granted unless the County makes findings of fact showing that the following circumstances exist:

1. For all variance requests, the applicant demonstrates, and the County finds that:

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5. For Critical Areas Variance requests allowed pursuant to A.7 of this section, the applicant demonstrates, and the County finds that:

- a) The variance request is consistent with the general standards applicable to all variance requests pursuant to D.1 of this section; and
- b) The variance request is consistent with the specific criteria applicable to Critical Areas Variances set forth in Chapter 17.02B ICC.

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17.03.230 Existing Uses

The Planning Director shall act upon applications for certificates of zoning compliance pursuant to the terms and conditions of this section.

A. **Purpose.** This section provides a simple and expeditious process for establishing, upon request of a property Owner, that a Lot, Use or Structure lawfully existed prior to the effective date of this Chapter. In addition, this section establishes the terms and conditions for continuing Existing Uses, Structures and Lots which were lawfully established prior to the effective date of this Chapter and to allow Existing businesses and uses to continue to operate even though the Use is no longer permitted in the zone in which the Use is located.

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H. **Expansion of Existing Use or Structure and Structural Modifications.** A legally established Existing Use or Structure may be expanded, enlarged, or extended (including extension of hours of operation) provided the expansion conforms to land Use standards set forth in ICC 17.03.180 for parking and Setbacks; the height restrictions of the applicable Zone; and the applicable Critical Area standards of Chapters 17.02, 17.02A, and 17.02B ICC. Provided that this subsection does not apply to Airports that are not zoned AP, Gun Clubs and Shooting Ranges or Junk and/or Salvage Yards.

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J. **Existing Certificates of Zoning Compliance.** This new Chapter does not alter or restrict Existing Certificates of Zoning compliance issued pursuant to Chapter 17.02 ICC, prior to the effective date of this Chapter, and any determinations or interpretations contained in a Existing Certificate are not affected by this Chapter.

K. **Applicability to Chapter 17.02B ICC.** This section shall also apply to Lots, Uses, Structures, and Developments which are subject to the standards, requirements, and regulatory provisions of Chapter 17.02B ICC. For such Lots, Uses, Structures, and Developments, the following provisions shall apply in addition to the other provisions of this section:

1. Lots, Uses, Structures, and Developments which in whole or in part are not in conformance with the current standards or requirements set forth in Chapter 17.02B ICC, but which were legally established at a prior date, at which time they were in conformance with all applicable

standards, and requirements in effect at the time of their inception shall be deemed a legally Existing Lot, Use, Structure, or Development and may be used as if conforming.

2. Lots, Uses, Structures, and Developments which in whole or in part are not in conformance with the current standards or requirements set forth in Chapter 17.02B ICC and were not in conformance with the applicable standards and requirements at the time of their inception, or subsequent modification, shall be deemed an illegal Lot, Use, Structure, or Development. Such Lots, Uses, Structures, and Developments shall not be approved for any alteration or expansion and actions shall be taken to reach conformance with the current standards and requirements of Chapter 17.02B ICC.
3. The burden of establishing that any Lot, Use, Structure, or Development was legally established in accordance with the applicable standards and requirements in effect at the time of its inception shall, in all cases, rest with the Owner and not with the County.
4. All modifications, expansions, and material alterations to a legally Existing Lot, Use, Structure, or Development shall be consistent with the standards and provisions of Chapter 17.02B ICC.

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17.03.260 Penalties and Enforcement

The Planning Director is charged with enforcement of the provisions of this Chapter, Chapters 17.02, 17.02A and 17.02B, Chapter 17.04, Chapter 17.05, Chapter 16.06, Chapter 16.14C, Chapter 16.15, Chapter 16.17, Chapter 16.21, Chapter 11.01, Chapter 11.02, Chapter 11.03, and Chapter 14.01A. It shall be unlawful for any Person to construct, enlarge, alter, repair, move, demolish, use, occupy or maintain any Use or cause the same to be done in violation of any of the provisions of this Chapter, Chapters 17.02, 17.02A and 17.02B, Chapter 17.04, Chapter 17.05, Chapter 16.06, Chapter 16.14C, Chapter 16.15, Chapter 16.17, Chapter 16.21, Chapter 11.01, Chapter 11.02, Chapter 11.03, and Chapter 14.01A. Any such violation is declared to be a public nuisance and shall be corrected by any reasonable and lawful means as provided in this section.

A. Inspections

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- B. **Cease and Desist Order.** Whenever a continuing violation of this Chapter, Chapters 17.02, 17.02A and 17.02B, Chapter 17.04, Chapter 17.05, Chapter 16.06, Chapter 16.15, Chapter 16.17, Chapter 16.21, Chapter 11.01, Chapter 11.02, Chapter 11.03, and Chapter 14.01A will materially impair the Planning Director's ability to secure compliance with said Chapters, or when any person is proceeding in defiance of permit requirements issued in conjunction with said Chapters, the Planning Director or his designee may issue a Stop Work Order and the following provisions shall apply:

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D. Violators Punishable by Civil Penalties. The Planning Director may:

1. Take appropriate informal action or institute a proceeding to require compliance with this Chapter or to enjoin, correct or abate any acts or practices which constitute or will constitute a violation. When appropriate, the Planning Director is authorized to waive the permit and/or restoration requirements of this ordinance as necessary to abate or correct a violation of a minor nature. If a violation can be remedied or abated through a permit process and the landowner agrees to submit all necessary applications, a period of up to forty-five (45) days shall be allowed for the landowner to make application for all necessary permits before an Enforcement Order may be issued.

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4. Suspend or revoke any approvals or permits issued for the same property and/or the property Owner pursuant to this Chapter, Chapters 17.02, 17.02A, and 17.02B, Chapter 17.04, Chapter 17.05, Chapter 16.06, Chapter 16.14C, Chapter 16.15, Chapter 16.17, Chapter 16.21, Chapter 11.01, Chapter 11.02, Chapter 11.03, and Chapter 14.01A ICC. Unless the permit is required as a means to achieve compliance, the Planning Director may also suspend review of any pending permit applications and refuse to process any permit applications applied for through the aforementioned Chapters until compliance is achieved; and

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E. Administrative Notice and Order. Within twenty (20) days of discovery or receiving notice of a potential violation, the Planning Director shall make a determination of whether a violation has occurred, and, if there is a determination that a violation has occurred that cannot otherwise be abated pursuant to subsection D.1, issue an enforcement order. The Planning Director shall notify the complainant of his determination in writing.

Additionally, whenever the Planning Director has reason to believe that a Use or condition exists in violation of this Chapter and that violation will be most promptly and equitably terminated by an administrative proceeding, he may commence an administrative notice and order proceeding to cause assessment of a civil penalty, abatement or suspension of work or revocation of any approvals or permits issued pursuant to this Chapter, Chapter 11.01, Chapter 11.02, Chapter 11.03, Chapter 14.01A, Chapter 16.06, Chapter 16.14C, Chapter 16.15, Chapter 16.17, Chapter 16.21, Chapter 17.04, Chapter 17.05 or Chapters 17.02, 17.02A and 17.02B ICC.

1. Enforcement Order. The order may be issued without written or oral notice. The Planning Director shall cause the enforcement order to be directed to and served upon the property Owner on whose property the violation exists, and/or operator of the source of the violation, and/or the Person in possession of the property where the violation originates, and/or the Person otherwise causing or responsible for the violation. In addition, the Order may be posted on the subject property and may be filed in the Office of the Island County Auditor. The order shall require immediate cessation of such work or activity and may temporarily suspend any approval or permit issued under this Chapter, Chapter 11.01, Chapter 11.02, Chapter 11.03, Chapter 14.01A, Chapter 16.06, Chapter 16.14C, Chapter 16.15, Chapter 16.17, Chapter 16.21,

Chapter 17.04, Chapter 17.05 or Chapters 17.02, 17.02A and 17.02B ICC. The notice and order shall contain:

...

G. Revocation of Approvals or Permits

1. Basis for revocation. The Planning Director may revoke any approval or permit issued under this Chapter, Chapter 11.01, Chapter 11.02, Chapter 11.03, Chapter 14.01A, Chapter 16.06, Chapter 16.14C, Chapter 16.15, Chapter 16.17, Chapter 17.04, Chapter 17.05 or Chapters 17.02, 17.02A and 17.02B ICC until compliance is achieved for:

...

17.03.270 Forest Practices

- A. Pursuant to RCW 76.09.060(3)(b)(i)(D) and (E) the following standards shall apply to forest practices conducted in Island County.

...

2. The grading permit application shall be reviewed for consistency with all applicable codes and ordinances of Island County including, but not limited to, Chapters 11.02 (Land Development Standards), 16.14C (SEPA), 17.03 (Zoning) and 17.02, 17.02A, and 17.02B (Critical area regulations) of the Island County Code.

...

Chapter 17.04A
Ebey’s Landing National Historical Reserve
Design Review and Community Design Standards

...

17.04A.020 Applicability

This Chapter applies to the geographic area of the Reserve within unincorporated Island County and to all buildings, sites, structures, landscapes, and objects which add to the historic architectural qualities, historic associations, or archeological values of the Reserve which were designated as “Contributing” in the *Building and Landscape Inventory*, prepared for the Ebey’s Landing National Historical Reserve; those that are subsequently listed on the *National Register of Historic Places*; and those properties containing protected cultural resources. This Chapter also applies to new construction within the geographic area of the Reserve within unincorporated Island County.

...

Nothing in this Chapter changes any of the requirements or land use entitlements set forth in the Island County Zoning Code (Chapter 17.03 ICC). Nothing in this Chapter changes any of the requirements set forth in the Island County Building and Construction provisions (Title 14 ICC), the Island County Critical Areas Ordinances (Chapters 17.02, 17.02A, and 17.02B ICC), the Island County Shoreline Master Program Use Regulations (Chapter 17.05 ICC), the Island County Planning and Subdivision Provisions (Title 16 ICC), or the Island County Land Development Standards (Title 11 ICC). This Chapter does not apply to timber management activities conducted in accordance with RCW 84.33 or RCW 84.34.

...